IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.691 OF 2006

Mr Chandrakant Hari Sane and ors. Appellants.
Vs
smt Saraswati Janardan Neman & ors. Respondents

Mr Jayesh Bhatt, for the appellants.
Ms Sharvari Shailendra i/b P.S.Dani for respondent nos 1 to 3 and 5 to 8.

CORAM : D.B.BHOSALE,J.
DATED : 01.10.2007

P.C.:

1. Heard the learned counsel for the parties. Admit. Returnable forthwith. Ms Shailendra, learned counsel, waives service for respondent nos. 1 to 3 and 5 to 8. By consent, Appeal is taken up for final disposal.

2. This second appeal by the original plaintiffs is against the judgment and order of the appellate court by which the appeal came to be dismissed. It appears that the trial Court had decreed the suit of the plaintiffs. The suit was for declaration that the gobar gas plant and toilet block create nuisance to the plaintiffs and it also causes imminent danger to the health of the plaintiffs and her family members. The plaintiffs had also prayed perpetual injunction restraining the defendants from using the said gobar gas plant and toilet block and to keep both closed

permanently. In the alternate, the plaintiffs had also prayed that if it is not possible to close the said gobar gas plant and toilet block permanently, then the defendants may be directed to shift both in an open plot in front of the defendants' house. The trial Court, though decreed the suit, did not consider prayers (b) and (c) in the suit and had simply directed to cover "the pit to which the dirt from the gobar gas, cattle shed and the latrine is collected". It appears that such direction was given without considering the prayers made in the suit. Learned counsel appearing for the parties have fairly stated that I need not record reasons for setting aside the impugned judgments of the courts below and have agreed for the following order.

(i) The judgment of the appellate court is quashed and set aside. The matter is remanded to the trial court with direction to hear the parties afresh and pass appropriate orders on prayers (b) and (c) in the plaint. The finding recorded by the trial Court on prayer (a) stands confirmed. The trial Court to dispose of the suit afresh within four months from the date of receipt of this order. All contentions of the parties are kept open insofar as prayers (b) and (c) are concerned. The second appeal stands disposed of.

(D.B.BHOSALE,J.)